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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 30/15. It highlights domestic law and policy developments in the area of preventing and countering violent extremism, with particular focus on the critical role the promotion and protection of human rights plays in this regard.

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I. Introduction

1. In its resolution 30/15, the Human Rights Council expressed deep concern at the profound threat posed by acts resulting from violent extremism to the realization and enjoyment of human rights and by the increasing and serious human rights abuses and violations of international humanitarian law by violent extremist and terrorist groups. In this context, the Council referred to acts involving unlawful killings, the deliberate targeting of civilians, the unlawful recruitment and use of child soldiers, sexual violence and other forms of violence, forced conversions, targeted persecution of individuals on the basis of their religion or belief, forced displacement and abduction, abuse of women and children, acts of violence against members of ethnic and religious minorities, and unlawful sieges involving civilians, especially minorities.[1] The General Assembly and the Security Council also have stressed the international nature of the question, with the Security Council drawing a link between violent extremism and terrorism, and warning that the former may be conducive to the latter.[2]

2. Violent extremism as a phenomenon is difficult to fully grasp. While research is ongoing to arrive at an understanding of what turns individuals, especially young men, to extreme ideology, resulting in violent acts on a massive scale, States have been adopting measures to prevent and counter violent extremism. Recognizing the need for States and communities to act to prevent violent extremism, in January 2016 the Secretary-General launched the Plan of Action to Prevent Violent Extremism, which emphasizes the need for a comprehensive approach to countering terrorism and violent extremism that goes beyond "law enforcement, military or security measures to address development, good governance, human rights and humanitarian concerns".[3] That approach includes addressing conditions conducive to violent extremism and terrorism and the human rights and gender dimensions of that issue, and gives new impetus to action under pillars I and IV of the Global Counter-Terrorism Strategy. The Secretary-General has stressed that ensuring security and respect for human rights are not competing but rather complementary goals, and that human rights play a key role in ensuring that efforts to prevent and counter violent extremism are effective and sustainable. In other words, all legislation, policies and programmes to prevent and counter violent extremism must be designed and implemented in a manner that complies with human rights to avoid the vicious circle whereby measures taken would risk feeding the very phenomenon they are aimed at preventing.

3. In its resolution 30/15, the Human Rights Council requested the United Nations High Commissioner for Human Rights to submit to it, at its thirty-third session, a compilation report on best practices and lessons learned on how protecting and promoting human rights contribute to preventing and countering violent extremism.

4. In compiling the present report and as encouraged by the Council in resolution 30/15, the Office of the United Nations High Commissioner for Human Rights (OHCHR) sought inputs from Member States through their Permanent Missions in Geneva and New York, international and regional organizations, national human rights institutions, and non-governmental organizations through a note verbale sent on 18 January 2016. Contributions were received from 28 Member States in all regions, three international and/or regional

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[1] Human Rights Council resolution 30/15.

[2] General Assembly resolutions 68/127 and 70/109, and Security Council resolutions 2178 (2014), 2242 (2015) and 2250 (2015).

[3] See A/70/674, para. 41.

organizations and 23 non-governmental organizations. A dedicated web page[4] was created in order to make available all contributions for public consultation and to provide further opportunity for input.

II. Human rights law and the factors and conditions contributing to the emergence of violent extremism

5. As stressed by the Human Rights Council in its resolution 30/15, human rights and fundamental freedoms, including the freedoms of peaceful assembly and of association, are essential components of democracy, providing individuals with invaluable opportunities to express their political opinions and enabling dialogue related to preventing and countering violent extremism.

6. In the context of prevention, the question of tackling extremist ideology needs to be examined through the lens of article 18 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The two provisions are similar and affirm the right to freedom of thought, conscience and religion. Article 18 of the Covenant unconditionally protects the freedom to have or to adopt a religion or belief of one's choice.[5] The manifestation of religion or belief can be subject to limitations, but only if they are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

7. Article 19 of both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, on freedom of opinion and expression, are also relevant. As highlighted by the Human Rights Committee, freedom of expression is an indispensable condition for the full development of the person and constitutes the foundation stone for every free and democratic society. The Covenant does not permit any exceptions to or restrictions on the right to hold an opinion.[6] However, article 19 (3) regulates the expression of these views and allows for restrictions that are provided by law and to the extent necessary for the protection of national security, public order (*ordre public*), or of public health or morals, or for respect of the rights or reputation of others.

8. With regard to hate speech, article 20 of the Covenant requires that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. With a view to enhancing the understanding of the relationship between freedom of expression and incitement to hatred, OHCHR initiated a series of regional expert workshops which resulted in the adoption in 2012 of the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.[7] The Rabat Plan of Action provides useful guidance through a six-part threshold test (considering the context, speaker, intent, content/form, extent and likelihood) in order to establish whether expressions should be considered as criminal offences.

9. Policies to counter violent extremism must be consistent with international law, including human rights law and international humanitarian law. Especially relevant in this context are the protections provided under international human rights law regarding the right to life, in particular concerning operations that involve the use of force. With regard to the criminal law response, prohibiting arbitrary detention and torture, cruel, inhuman or

[4] www.ohchr.org/EN/Issues/RuleOfLaw/Pages/PCVE.aspx.

[5] See Human Rights Committee, general comment No. 22 (1993), paras. 2-3.

[6] See Human Rights Committee, general comment No. 34 (2011), para. 9.

[7] See A/HRC/22/17/Add.4, annex, appendix.

degrading treatment or punishment, as well as ensuring the right to a fair trial, are of particular importance. The clarity of legal provisions and the principle of legality are also essential, in accordance with article 15 of the Covenant. In addition, prohibiting arbitrary deprivation of nationality, as well as ensuring the right to privacy, particularly online, are also relevant.

10. With regard to derogations, it may be instructive to recall article 4 of the Covenant, which provides for the possibility for States to temporarily adjust certain obligations under the Covenant in a time of "public emergency which threatens the life of the nation", provided that a number of conditions are met, notably that measures are limited to the extent strictly required by the exigencies of the situation. Any measures thus taken need to be in genuine response to the situation and be fully justified by the circumstances. Therefore, the mere fact that derogating from a specific provision may, of itself, be justified by the exigencies of the situation does not obviate the requirement to demonstrate the necessity of the concrete measures taken pursuant to the derogation.[8] States also have to ensure that adequate safeguards are set up to protect against arbitrary and disproportionate interference with human rights, given that the protection of the individual against arbitrariness is inherent in the principle of legality and the rule of law, which remain binding regardless of circumstances. Above all, certain rights cannot be derogated from under any circumstances, including those relating to the arbitrary deprivation of life, the prohibition of torture or cruel, inhuman or degrading treatment or punishment, and freedom of thought, conscience and religion.[9]

11. In any case, even when limitations on certain human rights are permissible, a number of conditions must be met. First, such restrictions must be prescribed by law and comply with the principle of legality, which continues to apply even during a state of emergency. In this respect, legislation and policies to prevent or counter violent extremism should clearly define the phenomenon they are targeting and the ambit of related programmes. Laws and policies must be formulated with sufficient clarity and precision to guide the actions of those implementing them and enable members of the public to regulate their conduct accordingly. A law conferring discretion upon State officials in applying its provisions should delineate clearly the scope of such discretion and describe in detail the circumstances in which interference with human rights is permitted. It should also foresee independent oversight mechanisms, to which a concerned individual can lodge complaints.

12. While the above provisions provide important guidance on assessing conduct, there are serious challenges in their application. To start with, terrorist and violent extremist groups[10] tend to operate in a secretive and decentralized manner, which makes their detection difficult. States have therefore tried to capture very early manifestations of radicalization, with some of these measures seriously infringing on the enjoyment of human rights.[11] Some researchers have been trying to establish some "indicators of

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[8] See Human Rights Committee, general comment No. 29 (2001), para. 4.

[9] See article 4 (2) of the International Covenant on Civil and Political Rights, which provides that "no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision".

[10] Nicholas Pace, "Decentralization: the future of ISIS", *Small Wars Journal* (November 2014); Thomas Mockaitis, *The "New" Terrorism: Myths and Reality* (Stanford, California, Stanford University Press, 2008), p. 120; Nathan Hamilton and David Gray, "Decentralized terrorism: ramifications for a centralized international system", *Global Security Studies*, vol. 3, Issue 2 (spring 2012).

[11] Harriet Allan and others, "Drivers of violent extremism: hypotheses and literature review" (Royal United Services Institute, 16 October 2015).

radicalization"[12] in an attempt to identify individuals on the path to adopting, or already having adopted, "extremist" views. This approach by itself entails the danger that some States may adopt a sequencing approach which places the maintenance of security ahead of the protection of human rights. This risks infringing absolute rights and impeding the ability to impartially and objectively assess the level of required limitations on other rights. Capturing all trajectories towards possible terrorism and violent extremism at the earliest possible stage may require casting the security net so wide that human rights protections are rendered ineffective.

13. States have repeatedly affirmed their commitment to take "measures aimed at addressing the conditions conducive to the spread of terrorism, including but not limited to prolonged unresolved conflicts, dehumanization of victims of terrorism in all its forms and manifestations, lack of the rule of law and violations of human rights, ethnic, national and religious discrimination, political exclusion, socioeconomic marginalization and lack of good governance, while recognizing that none of these conditions can excuse or justify acts of terrorism".[13] What is needed is a sophisticated understanding of how violent extremist movements develop, and what pushes individuals to join them. This often requires the careful consideration of a combination of individual, situational, economic, social and cultural factors and their interplay, beyond simple security measures.[14] Moreover, as emphasized by the Security Council and the Secretary-General, there is a need for gender-sensitive research and data collection on the drivers of radicalization for women and on their role in violent extremism.[15]

14. While hard to understand, violent extremism clearly does not evolve in a vacuum. As such, it cannot be predicted by one variable alone.[16] The Secretary-General stresses that the phenomenon "tends to thrive in an environment characterized by poor governance, democracy deficits, corruption and a culture of impunity". He adds that violent extremist narratives become attractive where "human rights are being violated, good governance is being ignored and aspirations are being crushed".[17]

15. With empirical research being thus far scarce, a holistic approach to the factors and conditions contributing to the emergence of violent extremism is needed. The Special Rapporteur on the promotion and protection of human rights while countering terrorism also stressed that "the path to radicalization is individualized and non-linear, with a number of common 'push' and 'pull' factors, but no single determining feature".[18] Furthermore, the

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[12] See M. Sageman, "The stagnation in terrorism research", *Terrorism and Political Violence*, vol. 26, Issue 4 (2014), pp. 568-569.

[13] General Assembly resolutions 60/288, 68/276 and 70/291.

[14] In this sense, see Arun Kundnani, "A decade lost: rethinking radicalisation and extremism" (Claystone, January 2015); ARTIS Research and Risk Modeling, "Theoretical Frames on pathways to violent radicalization" (August 2009), available from www.artisresearch.com/articles/ARTIS_Theoretical_Frames_August_2009.pdf; Martha Crenshaw, "The causes of terrorism", *Comparative Politics*, vol. 13, No. 4 (July 1981), pp. 379-399; Alex Schmid, "Radicalisation, de-radicalisation, counter-radicalisation: a conceptual discussion and literature review" (The Hague, International Centre for Counter-Terrorism, 2013); and Rik Coolsaet, "All radicalisation is local: the genesis and drawbacks of an elusive concept" (Egmont – Royal Institute for International Relations, June 2016), available from http://egmontinstitute.be/wp-content/uploads/2016/05/ep84.pdf.

[15] Security Council resolution 2242 (2015); and A/70/674, para. 53.

[16] ARTIS Research and Risk Modeling, "Theoretical frames on pathways to violent radicalization".

[17] See A/70/674, para. 3.

[18] See A/HRC/31/65, para. 15.

Special Rapporteur has joined others[19] in warning against overemphasizing religious ideology as the driver of terrorism and violent extremism at the expense of considering other potential political, social or economic factors.[20]

III. Domestic law and policy developments in the area of preventing and countering violent extremism

16. As documented in contributions received for the present report, recent events in the international and domestic arena, including the need to stem the flow of foreign fighters and acts of home-grown terrorism and violent extremism, or fear of such acts, have led many States to adopt legislation and policies aimed at dealing with the challenge of violent extremism.

17. Laws, policies and measures adopted refer to "violent extremism" and related notions, such as "extremism" and "radicalization". Violent extremism has been described as the "use or support of violence",[21] the "willingness" to use violence,[22] committing, advocating or encouraging acts of violence;[23] and "promoting views which foment and incite violence in furtherance of particular beliefs, and foster hatred which might lead to inter-community violence".[24] Violent extremism is generally conceived as being aimed at achieving political, ideological or religious goals,[25] or as the means employed by groups that reject democracy, human rights and the rule of law.[26] Some definitions explicitly note that radical views are by no means a problem in themselves, but that they become a threat to national security when such views are put into violent action.[27] In other cases, definitions employed do not make fully clear whether "violent extremism" presupposes violent action or inciting violent action, or whether lesser forms of conduct that do not normally trigger criminal law sanctions would also be included.

18. Some domestic laws and policies address the phenomenon of "extremism" without qualifying it as "violent". They define "extremism" as "vocal or active opposition" to the values of the respective country or society, including "democracy, the rule of law,

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[19] See www.e-ir.info/2014/11/20/interview-marc-sageman; Kundnani, "A decade lost", pp. 10-11 and 22-25; "Scott Atran on youth, violent extremism and promoting peace", available from http://blogs.plos.org; and Matthew Weaver, "Cameron's anti-terror strategy is 'barking up wrong tree', says expert", *The Guardian* (20 July 2015). See also A/HRC/28/66, paras. 19 and 22-38.

[20] See Mark Sedgwick, "The concept of radicalization as a source of confusion" in *Terrorism and Political Violence*, vol. 22, No. 4 (2010), pp. 480-481.

[21] Government of Australia, Attorney-General's Department, "Countering Violent Extremism", available from https://www.ag.gov.au/NationalSecurity/Counteringviolentextremism/Pages/default.aspx.

[22] Norwegian Ministry of Justice and Public Security, Action Plan against Radicalization and Violent Extremism, available from https://www.counterextremism.org/resources/details/id/679/action-plan-against-radicalisation-and-violent-extremism.

[23] Swiss Federal Council, Ordonnance sur le Service de renseignement de la Confédération.

[24] Organization for Economic Cooperation and Development, Development Assistance Committee high-level meeting, communique of 19 February 2016.

[25] Norwegian Ministry of Justice and Public Security, Action Plan against Radicalization and Violent Extremism. See also Government offices of Sweden, Action Plan to Safeguard Democracy against Violence-Promoting Extremism.

[26] Swiss Federal Council, Ordonnance sur le Service de renseignements de la Confédération.

[27] Government of Canada, "Violent extremism", available from https://www.publicsafety.gc.ca/cnt/ntnl-scrt/cntr-trrrsm/cntrng-vlnt-xtrmsm/vlnt-xtrmnsm-eng.aspx.

individual liberty and mutual respect and tolerance of different faiths and beliefs".[28] Some definitions of "extremism" refer to notions or aims which are racist, anarchist, nationalist, authoritarian or totalitarian regardless of their political, ideological, religious or philosophic character, and which are contrary, in theory or in practice, to principles of democracy or human rights, to the good functioning of the democratic institutions of the State or to other basic principles of the rule of law.[29] Some laws and policies go further and describe extremism as encompassing non-violent conduct, including conduct deemed to insult national pride or breach national dignity,[30] or knowingly disseminating false accusations against federal or regional officials, such as allegations that they have committed illegal or criminal acts in their official capacity.[31] If they are not limited to "violent" extremism, such measures risk targeting the holding of an opinion or belief rather than actual conduct.

19. Another term that is often used is "radicalization", with a number of States adopting some policy responses to this phenomenon. The notion of "radicalization" is generally used to convey the idea of a process through which an individual adopts an increasingly extremist set of beliefs and aspirations. This may include, but is not defined by, the willingness to condone, support, facilitate or use violence to further political, ideological, religious or other goals.[32] States and other stakeholders use various definitions for radicalization, frequently limiting the focus to "violent" radicalization[33] or radicalization leading to terrorism.[34] The European Police Office (Europol) has recently recommended referring to a "violent extremist social trend" rather than using the term "radicalization".[35] However, such vague concepts risk infringing human rights, including article 15 of the International Covenant on Civil and Political Rights. The Secretary-General, in his Plan of Action to Prevent Violent Extremism, left the definition of violent extremism to the domestic level but cautioned that such definitions must be consistent with States' obligations under international law, in particular international human rights law.[36]

20. Moreover, a legal or policy framework that fails to clearly define the phenomenon it seeks to address not only risks leading to inefficient measures, but may also become harmful. Vague concepts such as "violent extremism", "extremism" or "radicalization" are

[28] United Kingdom, "A stronger Britain, built on our values", speech of the Home Secretary (23 March 2015), available from https://www.gov.uk/government/speeches/a-stronger-britain-built-on-our-values.

[29] Government of Belgium, Direction générale sécurité et prévention, "Définitions: radicalisation violente", available from https://www.besafe.be/fr/base-de-connaissance/d-finitions-radicalisation-violente.

[30] Article 19, "Kyrgyzstan: Law on Countering Extremist Activity" (London, December 2015), available from at https://www.article19.org/data/files/medialibrary/38221/Kyrgyzstan-Extremism-LA-Final.pdf; and Tajikistan, Law No. 69/2003 on the Fight Against Extremism, art. 3.

[31] See Russian Federation, Federal Law No. 114-FZ on Countering Extremist Activity (2002), art. 1.

[32] Government of Denmark, "A common and safe future: an action plan to prevent extremist views and radicalisation among young people" (2009); and Council of Europe, Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism (2016).

[33] Government of Canada, "Violent extremism"; and European Commission's Expert Group on Violent Radicalisation, "Radicalisation processes leading to acts of terrorism" (2008).

[34] Organization for Security and Cooperation in Europe, *Preventing Terrorism and Countering Violent Extremism and Radicalization that Lead to Terrorism: A Community-Policing Approach* (February 2014).

[35] European Police Office, "Changes in modus operandi of Islamic State terrorist attacks" (January 2016), available from https://www.europol.europa.eu/content/changes-modus-operandi-islamic-state-terrorist-attacks.

[36] See A/70/674, para. 5.

open to interpretation and may easily be abused.[37] In particular, they risk encompassing manifestations or acts that are lawful under international human rights law.

21. In some jurisdictions, counter-extremism legislation has reportedly been used to unduly restrict human rights, such as freedom of expression, peaceful assembly and religion or the right to privacy.[38] The Special Rapporteur on freedom of religion or belief has repeatedly expressed concern that overly broad or vague definitions of extremism may be applied arbitrarily and misused to control religious communities or even criminalize legitimate manifestations of religion or belief.[39] Similarly, the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has expressed concern that Governments have used vague and broad definitions of "terrorism" to punish those who do not conform to traditional gender roles and to suppress social movements that seek gender equality in the protection of human rights.[40]

22. The interchangeable use of the terms "violent extremism" and "terrorism", as well as the lack of a clear delineation of the boundaries between them, may also be problematic.[41] The Secretary-General's Plan of Action to Prevent Violent Extremism notes that "violent extremism encompasses a wider category of manifestations" than terrorism but warns against the risk of conflating the two terms. Indeed, without clear definitions, initiatives aimed at preventing or countering violent extremism may be, and at times have been, used to justify an overly broad application of counter-terrorism measures to target acts that would not meet the criteria for acts of terrorism or terrorism-related conduct.[42]

23. Although preventing and countering violent extremism is frequently described as the use of non-coercive means to dissuade individuals from resorting to violence in the furtherance of political, social or ideological goals,[43] a number of measures adopted in that regard at the national level risk interfering with human rights. Under the umbrella of preventing and countering violent extremism, States have, among other things, placed individuals under surveillance, removed or blocked online content, restricted freedom of movement and liberty of persons, banned access to education, and temporarily removed minors from their families. Oftentimes, no assessment has taken place on the gendered impact of such measures, including those which seem gender neutral but result in discriminatory treatment because of the underlying gender dynamics.

24. Measures to prevent and counter violent extremism are legal only if they are fully in conformity with international law, in particular international human rights law. Therefore, while security and intelligence services should be provided with adequate tools to enable them to protect societies from violence, it is particularly important to ensure that there are

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[37] A/HRC/28/28 and A/HRC/31/65.

[38] See, for example, the joint allegation letters and urgent appeals sent by special procedure mandate holders in A/HRC/31/79, p. 57 (RUS 3/2015), A/HRC/29/50, p. 52 (MDA 1/2015), and A/HRC/25/74, p. 50 (UZB 2/2013).

[39] See A/HRC/28/66/Add.1, para. 49; A/HRC/22/51, para. 53; A/HRC/16/53/Add.1, para. 100; and E/CN.4/2005/61/Add.1, para. 152.

[40] See A/64/211 and Corr.1, para. 27.

[41] Minerva Nasser-Eddine and others, "Countering violent extremism (CVE) literature review" (Department of Defence of Australia, Counter Terrorism and Security Technology Centre, Defence Science and Technology Organisation, March 2011).

[42] See A/70/674, para. 4.

[43] Humera Khan, "Why countering extremism fails", *Foreign Affairs* (18 February 2015), and Bryan Price, "A view from the CT foxhole: an interview with Tom Wheelock" (Combating Terrorism Center, 30 April 2015), available from https://www.ctc.usma.edu/posts/a-view-from-the-ct-foxhole-an-interview-with-tom-wheelock.

independent and effective judicial and parliamentary checks guaranteeing the protection of human rights while preventing and countering violent extremism.

IV. Best practices and lessons learned on human rights-compliant programming to prevent and counter violent extremism

25. During the Human Rights Council panel discussion on 17 March 2016 (see A/HRC/33/28), the Deputy United Nations High Commissioner for Human Rights stressed that responses to violent extremism that respect and protect human rights are more effective and sustainable.[44] Drawing on the diverse range of contributions received, the present section of the report is aimed at capturing best practices and lessons learned to ensure that programming to counter and prevent violent extremism complies with human rights standards.

26. "Direct prevention" is aimed at eliminating risk factors and establishing a legal, administrative and policy framework designed to prevent human rights violations, while "indirect prevention" is aimed at preventing recurrence of violations by identifying and addressing their causes.[45] For a response to be effective, it must take into account the specific context it is aimed at addressing. States have long been implementing programmes aimed at combating social exclusion or marginalization, enhancing access to economic, social and cultural rights, furthering gender equality, and ensuring the real and equal participation of all in political and public life to help individuals feel properly represented by their institutions. In other situations, the perception of corrupt and poor governance produces anger and disillusion. A culture of impunity and lack of accountability contributes to moving individuals and societies towards violence. Some States have been investing in strengthening rule-of-law institutions to reduce anger and grievances. These activities are indispensable to build inclusive and cohesive societies, and help to create understanding and mutual respect between different communities. While such activities can certainly contribute to preventing the emergence of violent extremism, human rights obligations exist independently. The duty to protect, promote and fulfil human rights ought to continue to be an objective in its own right, rather than become a tool subordinated to the agenda related to preventing and countering violent extremism.[46] Furthermore, social, education and other policies or programmes will be less effective and civil society space may shrink if they are approached through a security mindset.[47]

27. Continual monitoring of the human rights impact of measures to prevent and counter violent extremism, in particular on women, children, and ethnic and religious communities, and meaningful and independent oversight, are crucial to safeguarding human rights. This

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[44] Contribution of Kate Gilmore, Deputy United Nations High Commissioner for Human Rights, to the panel discussion on the human rights dimensions of preventing and countering violent extremism, held on 17 March 2016, available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17245&LangID=E.

[45] See A/HRC/30/20, paras. 9-10.

[46] See A/HRC/31/65, and Naz Modirzadeh, "If it's broke, don't make it worse: a critique of the U.N. Secretary-General's plan of action to prevent violent extremism", *Lawfare Blog* (23 January 2016), available from www.lawfareblog.com.

[47] Input from the American Civil Liberties Union and Brennan Center for Justice; Article 19, statement on proposed amendments to the Russia Federation extremism law (July 2006); and Jayne Huckerby, "The complexities of women, peace, security and countering violent extremism" in *Just Security*, 24 September 2015.

is particularly important considering that there seems to be insufficient information available with respect to the effectiveness, and the gender and human rights impact, of some newly set up policies.[48] Furthermore, the evaluation of policies, programmes and activities contributes to ensuring that lessons are learned, programmes can be duly adjusted and good practices distilled. Making the results of such evaluations public also fosters trust and ensures transparency.

28. Recurring components of best practices and lessons learned on human rights-compliant programming aimed at preventing and countering violent extremism relate to community engagement and empowerment, youth engagement and online measures to prevent and counter violent extremism.

A. Community engagement and empowerment

29. Establishing a trust-based relationship between communities and authorities, including security forces, as well as social and educational services, helps build resilience and prevent violence. Initiatives related to preventing and countering violent extremism tend to be more successful when there is a pre-existing relationship with the community. In cases in which the State authorities have not previously engaged with a community, or if engagement happened largely through security forces, such programmes that are carried out by the authorities, or that visibly involve them, may cause further tensions. Routinely investing in community engagement helps to deflect such risks and provides broad benefits that go beyond preventing and countering violent extremism. However, community engagement will not counteract those factors favouring violent extremism that are external to the community. The authorities therefore also need to address such external factors.

30. In order to be effective and take into account contextual and individual triggers of violent extremism, programming aimed at preventing and countering violent extremism should be based on needs assessments that are gender sensitive and that meaningfully involve relevant stakeholders and affected groups, including civil society, as well as community and religious leaders. However, if engagement mainly focuses on male community and religious leaders, there is a risk of leaving out women. Thus the comprehensive engagement of women at all levels is crucial in this context. Such an approach also facilitates local ownership by the groups or communities that the programme is intended to benefit.

31. Due care should be taken when devising and implementing such programmes to ensure that they have no direct or incidental effects that would result in discrimination, stigmatization and racial or religious profiling. This is particularly important, as targeting specific communities may lead to further marginalization and grievances. Fully and inclusively engaging communities in designing the programmes aimed at them is the best way to avoid unintended negative consequences and to guarantee that such programmes address the political, social, security-related and other issues identified by the community as matters of concern.

32. In a number of States, security forces, in particular law enforcement agencies, seem to be at the forefront of programmes to prevent and counter violent extremism. While security actors may play a constructive role in these initiatives, the nature and extent of their involvement needs to be carefully devised, as it may be detrimental to relations with the community if the counter-terrorism agenda is mixed with the community cohesion

[48] Peter Romaniuk, "Does CVE work? Lessons learned from the global effort to counter violent extremism" (Global Center on Cooperative Security, 2015).

agenda. Such an approach may also pose serious human rights concerns, above all in cases in which civil servants involved in education, social service or even health delivery programmes bear a statutory obligation to share information about those with whom they interact. Whenever such obligation exists, transparency about it with the beneficiaries of such services is paramount.

33. In addition, programmes to prevent and counter violent extremism should not serve as a cover for broad law enforcement or intelligence collection activities. While such an approach may yield short-term benefits, there is a grave risk that it will result in undermining the community's trust in public authorities. It may have a negative impact on the ability of law enforcement actors to operate within the respective community, which may lead them to resort to ever more intrusive measures, potentially setting into motion a vicious circle of violence and abuse.

34. Sustainable and effective community outreach requires long-term engagement tailored to the specific context. Those involved in the delivery of such programmes should undergo requisite training to ensure that they have full knowledge and understanding of the background to the programme and the context in which they operate. Furthermore, engagement must take into account the individuals and groups concerned. No community should be seen as a homogeneous entity. In particular, due regard should be given when devising such programmes to the situation and needs of groups that are particularly disadvantaged within the respective community.

35. Some efforts in that regard have tended to emphasize women's engagement in ways that have reinforced gender stereotypes[49] or have led to women being perceived as mere tools of national security.[50] Community engagement frequently goes hand in hand with placing the family structure at the front line of prevention of violent extremism. However, placing an emphasis on women as primary agents due to their presumed position within the household is largely based on gender stereotypes. Moreover, focusing efforts to prevent and counter violent extremism on assistance to men and boys because they are considered to be most at risk of "radicalization" in a particular community may lead to allocating or reallocating resources in a way that risks further marginalizing women and girls, who often face more acute needs in their community.[51] Consultations with local women's groups when drafting programmes will help in finding ways to address these challenges.

36. Religious leaders also play an important role in preventing incitement to violence. Interreligious and intrareligious dialogue initiatives have been identified as essential factors to preserve the space for tolerance and mutual respect.[52] In this context, representatives from different religions and faiths committed in the declaration adopted on 24 April 2015 in Fez, Morocco,[53] inter alia, to publicly denounce all acts of violence, discrimination and

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[49] See Jayne Huckerby, "Feminism and international law in the post-9/11 era", *Fordham International Law Journal*, vol. 39, No. 3 (2016), p. 550.

[50] See e.g. United Nations Entity for Gender Equality and the Empowerment of Women, *Preventing Conflict, Transforming Justice, Securing The Peace* (2015); and Jayne Huckerby, "Women and preventing violent extremism: the U.S. And U.K. experiences", briefing paper (New York, NYU Centre for Human Rights and Global Justice, 2012).

[51] See Huckerby, "Feminism and international law in the post-9/11 era", p. 558; and Centre For Human Rights and Global Justice, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* (New York, NYU School of Law, 2011).

[52] Input from Senegal.

[53] Input from Morocco; and draft declaration of the forum on the role of religious leaders in preventing incitement that could lead to atrocity crimes, held in Fez, Morocco, on 24 April 2015, available from www.un.org/en/preventgenocide/adviser/pdf/FezDeclaration.pdf.

incitement to violence, including those perpetrated in the name of religion or belief, as well as to refrain from disseminating messages of incitement to hatred.

37. Comprehensive community outreach should be carried out with the aim of fighting exclusion and marginalization. This implies ensuring that individuals from all communities are provided access to basic services in a non-discriminatory manner, that enjoyment of economic, social and cultural rights is enhanced, and that equal participation of all in political and public life is guaranteed, in accordance with the principle of equality and non-discrimination, as provided in international human rights law.

38. Civil society should be viewed as a key ally in endeavours to prevent violent extremism. Civil society organizations may be best placed to implement activities relating to preventing and countering violent extremism, including through partnerships with relevant authorities, in particular in contexts in which State involvement has proven counterproductive or would undermine trust between authorities and communities.[54] To maintain and further the community's trust, both the authorities and civil society organizations involved in such activities should be transparent about the level of contact between organizations providing services to the community and the authorities, including any requirements to report on interactions with the beneficiaries of programmes, as well as about the goals and intentions of their engagement.[55] State oversight of civil society organizations should not unduly interfere with their work and should not be of a nature that would risk undermining the confidence between the respective organization and the community it serves.

39. The duty of States to exercise due diligence in ensuring that the human rights of individuals or groups are not subject to abuse by non-State actors includes the duty to provide the requisite conditions and safe space for civil society organizations to be able to carry out their work. These organizations face particularly difficult challenges when engaged in a context or territory where violent extremist groups are present.[56] In such cases, initiatives to preserve or widen civil society space may be further developed.

40. States have the responsibility to set up the necessary regulatory and operational framework to ensure that non-profit organizations are not misused for the financing of terrorism. However, measures taken in this regard, in particular when paired with overly broad definitions of material support to terrorism, have in some countries resulted in restrictions on civil society funding. The Special Rapporteur on the rights to freedom of peaceful assembly and of association has stressed that many of these restrictions do not legitimately advance the fight against money-laundering and terrorism, but rather are motivated by political reasons.[57] The adverse effect is particularly great on organizations operating in contexts in which groups considered "terrorist" or "violent extremist" are active, thereby having a negative impact on the delivery of much-needed assistance to populations present in such territories.[58]

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[54] Peter Romaniuk, "Does CVE work?".

[55] See Organization for Security and Cooperation in Europe, *Preventing Terrorism and Countering Violent Extremism and Radicalization*, p. 122; Radicalisation Awareness Network (RAN), *RAN Collection: Preventing Radicalisation to Terrorism and Violent Extremism* (2016), pp. 51, 88, 199 and 201.

[56] Naz Modirzadeh, "If it's broke, don't make it worse".

[57] See A/69/365, para. 35.

[58] See A/HRC/23/39, para. 25; A/70/371, paras. 17-44; statement by Maina Kiai, Special Rapporteur on the rights to freedom of peaceful assembly and of association, at the Financial Action Task Force consultation and dialogue meeting with non-profit organizations held on 18 April 2016, available

41. Grass-roots organizations, especially those representing disadvantaged groups, are frequently small-sized. They face particular difficulties, as rules to counter the financing of terrorism tend to favour large, well-known organizations and require strict reporting and auditing requirements. Grass-roots organizations often do not have the administrative infrastructure necessary to comply with the imposed reporting and auditing requirements.[59] These circumstances frequently result in the inability of small organizations to attract the funding needed for their operations and have a negative impact on the groups supported by them.

B. Youth engagement

42. Programmes involving youth should feature prominently in efforts to prevent and counter violent extremism. Many young people experience a sense of disenfranchisement and marginalization, which may leave them vulnerable to violent extremism. In addition to being potential perpetrators and victims of violent extremism, young people are also crucial players in prevention efforts and thus an important part of any solution.[60]

43. Young people can be engaged in a variety of ways, including through educational, arts or sports activities.[61] The most effective programmes are peer driven and aimed at developing life skills, such as conflict management, teamwork, tolerance and empathy.[62] These skills can be developed in the context of programmes aimed at furthering political, ethnic, social and religious tolerance, cultural diversity and gender equality, as well as at increasing knowledge about democratic values and human rights.

44. While online and offline "counter-narrative" campaigns aimed at reaching a large group of young people may be "of great value as means of general education, designed to raise the population's awareness and building a resilient society",[63] direct engagement in small groups has shown the highest effectiveness, in particular with youth at imminent risk of joining violent extremist groups.[64]

45. Participation in any such programmes and activities should be on a voluntary basis. There is also a need to ensure that initiatives are neither devised nor implemented in a manner that would result in discrimination or racial or religious profiling. They should include youth from all backgrounds as opposed to solely focusing on those which the authorities or implementing organization consider to be at risk of violent extremism.

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from www.ohchr.org/Documents/Issues/IAssociation/UNSR_statement_FATFmeeting-13April2016.pdf; and Naz Modirzadeh, "If it's broke, don't make it worse".

[59] See Center for Human Rights and Global Justice, *A Decade Lost: Locating Gender in U.S. Counter-Terrorism* (New York, New York University School of Law, 2011), sect. IV.

[60] See Secretary-General's remarks at open debate on the role of youth in countering violent extremism and promoting peace, available from www.un.org/sg/statements/index.asp?nid=8568.

[61] United Nations Educational, Scientific and Cultural Organization (UNESCO), *A Teacher's Guide on the Prevention of Violent Extremism* (Paris, 2016).

[62] Ibid.; input from the Order of the Teaspoon foundation; and Radicalisation Awareness Network, *RAN Collection: Preventing Radicalisation to Terrorism and Violent Extremism*.

[63] Harald Weilnböck, "Confronting the counter-narrative ideology: Embedded face-to-face prevention and youth (media) work" (Cultures Interactive, 2015), available from http://cultures-interactive.de/fachartikel.html.

[64] Radicalisation Awareness Network, *RAN Collection: Preventing Radicalization to Terrorism and Violent Extremism*; and Harald Weilnböck, "Responding to violent extremism needs more investment in human resources practitioners, less in videos and Internet" (Cultures Interactive, 2015), available from http://cultures-interactive.de/fachartikel.html.

46. Educational institutions and other organizations engaging with youth must provide for safe spaces where young people can freely express their views in full respect of human rights, notably the right to freedom of opinion and expression, and without any fear of adverse consequences. In particular, the importance of spaces for the development of critical thinking skills, which allow youth to challenge the arguments of violent extremists, needs to be highlighted.[55] A platform for debate should be provided, including to address biases and prejudices. Engaging with such ideas in an open and constructive manner is more likely to yield positive results than shutting down discussion.

47. National human rights institutions and civil society organizations can play a central role in developing human rights education and training tailored to youth. Furthermore, it is important to ensure coordination among the various providers of training courses and to ensure that youth workers themselves benefit from human rights education and training as a means of bringing a stronger human rights perspective to their work and to maintaining a democratic, tolerant and sustainable society that promotes human values and mutual respect.[56]

48. When engaging with youth, educators and social workers should not be required to share information about the individuals they work with unless the information is of a criminal nature or sharing it is in the best interests of a child. Requiring those working with young people to report on them not only unduly interferes with these young people's human rights, including their right to privacy and freedom of opinion and expression, but may also have a negative impact on the effectiveness of these youth engagement programmes.

C. Preventing and countering violent extremism online

49. The role of the Internet, and in particular of social media, has often been emphasized in the context of preventing and countering violent extremism. The Security Council has repeatedly called on States to strengthen international cooperation in countering the use of the Internet and social media for terrorist purposes, in particular with regard to efforts to stem the flow of foreign fighters to areas of armed conflict.[57] The Secretary-General's Plan of Action to Prevent Violent Extremism describes the Internet both as a platform used for recruitment efforts by violent extremist groups and as a tool for challenging the narrative propagated by such groups.[58]

50. The Internet and digital technologies can be used for both positive and harmful ends. While they are crucial tools for sharing and collecting information, as well as for fostering democratic participation, their potential has also been abused by certain violent extremist groups to recruit followers. Indeed, the Internet and digital communications technologies have become a means through which human rights are exercised as well as the means through which they are violated.

51. In the era of "big data", States as well as information and communications technology providers have the capacity to censor expression, block or filter access to information, intercept data and monitor online activity. As the OHCHR report on the right to privacy in the digital age put it, "the technological platforms upon which global political, economic and social life are increasingly reliant are not only vulnerable to mass

[55] Input from the United Kingdom.
[56] Inputs from Finland, Morocco and Slovenia.
[57] Security Council resolutions 1373 (2001), 1624 (2005) and 2178 (2014).
[58] See A/70/674, para. 55.

surveillance, they may actually facilitate it."[69] The same is true in relation to controlling content online. While the Internet has unleashed huge potential for the free flow of information, there is also an expanded possibility of overreach by States in which the Internet is extensively controlled.

52. A key component of many policies and measures aimed at preventing and countering violent extremism is focused on effectively responding to violent extremism online. The level of intrusiveness of measures and their impact on human rights depends on the definition of notions such as "extremism", "violent extremism" and "radicalization" and the perceived role played by extremist ideas, including exposure to such ideas, in processes leading individuals to turn to violent extremism or terrorism.

53. Restrictions on access to information and communications technology range from complete network shutdowns or disruptions, to blocking access to certain platforms, to imposing restrictions on individuals connecting to, or using, certain technologies. The blocking or removal of specific content has been used as a measure to counter violent extremism. States invoke various reasons for the necessity of employing such measures, including the need to prevent radicalization, violent extremism and the recruitment of foreign fighters; countering incitement to acts of terrorism; and stopping the dissemination of terrorist material.

54. The above-mentioned measures, however, are at odds with the individualized assessment required under human rights law. States have to provide evidence-based justification of the necessity and proportionality of such interference with freedom of expression. They must demonstrate how the perceived benefits of these measures outweigh the importance of the Internet as a tool to maximize the number and diversity of voices in the discussion of numerous issues. Any lack of transparency with regard to blocking or content removal measures renders it difficult to assess whether such restrictions were really necessary for the purported aim. Consequently, there is a need for much greater transparency by States to clarify what content they are filtering, blocking or removing and on what basis.

55. States may also use information and communications technology companies to control and regulate access to content in the digital space. When doing so, States resort to formal legal processes, including court orders and intermediary liability systems, that force companies to actively monitor content, or to more diffuse forms of pressure to cooperate. Host providers and social media platforms face increasing pressure to actively monitor and police content generated or disseminated by users, a trend exacerbated by the use of information and communications technology by violent extremists and terrorist groups.

56. Another frequently employed means in the fight against violent extremism is the monitoring of online content: surveillance, interception, collection and retention of data. Some States have claimed that mass surveillance is "necessary" to detect terrorist plots and identify terrorists, violent extremists, their recruiters and other supporters.[70] The gathering, storage and use of data can have an impact on a number of human rights, including the rights to privacy, freedom of peaceful assembly and association, and freedom of movement.[71] The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression highlighted that online surveillance may also undermine the right to form an opinion, as the fear of unwilling disclosure of online activity, such as

[69] See A/HRC/27/37, para. 2.
[70] A/69/397.
[71] See A/HRC/13/37, paras. 33-38.

search and browsing, may deter individuals from accessing information, particularly where such surveillance leads to repressive outcomes.[72]

57. As affirmed by the General Assembly[73] and the Human Rights Council,[74] rights enjoyed offline must also be protected online, including the right to privacy. While the right to privacy is not an absolute right, it must be protected against unlawful or arbitrary interference.[75] For an interference to be in line with international human rights law, the national law allowing it must be sufficiently accessible, clear and precise so that an individual may look to the law and ascertain who is authorized to conduct surveillance and under what circumstances.[76] Surveillance must be based on reasonable suspicion, and any order authorizing it must be sufficiently targeted.[77] Surveillance programmes frequently fail this requirement.[78] Prior judicial authorization and effective independent oversight during and after surveillance are additional important safeguards against arbitrariness.[79]

58. The General Assembly[80] and OHCHR[81] have called upon all States to review their procedures, practices and legislation related to communications surveillance, interception and collection of personal data, emphasizing the need for States to ensure the full and effective implementation of their obligations under international human rights law.[82] As also highlighted by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, mass secret surveillance is not permissible under international human rights law, as an individualized necessity and proportionality analysis would not be possible in the context of such measures.[83]

59. As previously noted, there is strong evidence of growing reliance by States on the private sector to conduct and facilitate digital surveillance, using both formal legal mechanisms and covert mechanisms to gain access to content and metadata. Companies that provide mass and targeted surveillance technologies without adequate safeguards are of particular concern, in particular because such technologies may be used to silence dissidents.[84] The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression warned that it is all too common for private companies to censor, conduct surveillance, or enforce other restrictions on freedom of expression, often under pressure from Governments, but sometimes on their own initiative.[85] The Guiding Principles on Business and Human Rights, which were endorsed by the Human Rights Council in its resolution 17/4, provide an important framework for the consideration

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[72] See A/HRC/29/32, para. 21.
[73] General Assembly resolutions 68/167 and 69/166.
[74] Human Rights Council resolutions 20/8 and 26/13.
[75] See A/HRC/27/37, paras. 22-23; see also A/HRC/13/37, para. 17.
[76] See A/HRC/27/37, para. 23.
[77] See European Court of Human Rights, Grand Chamber, *Zakharov v. Russia* (4 December 2015), para. 248; European Court of Human Rights, Fourth Section, *Szabo and Vissy v. Hungary* (12 January 2016), para. 77; and CCPR/C/NZL/CO/6, para. 16.
[78] See A/69/397, para. 37; and A/HRC/27/37.
[79] See A/HRC/14/46, para. 34.
[80] General Assembly resolutions 68/167 and 69/166.
[81] See A/HRC/27/37, para. 50.
[82] See A/69/397, para. 31.
[83] See See A/HRC/27/37, para. 25; and A/69/397, para. 47.
[84] Reporters without Borders, "Enemies of the Internet 2013 report – special edition: surveillance", introduction ("Era of the digital mercenaries").
[85] A/HRC/32/38; and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20115&LangID=E.

of private business responsibilities in the information and communications technology sector worldwide.

V. Conclusions and recommendations

60. The impact of violent extremism on human rights cannot be underestimated in view of the shocking brutality perpetrated on a daily basis. Each State has the duty to take measures to protect all individuals within its territory and those subject to its jurisdiction from violence. These measures must be consistent with human rights. Protecting human rights and ensuring respect for the rule of law contribute to preventing and countering violent extremism. Responses to violent extremism that respect and protect human rights are also more effective and sustainable.

61. Key concepts related to violent extremism should be clearly defined, particularly when they are likely to trigger measures that may interfere with human rights. This is of particular concern where domestic legislation creates criminal offences based on such concepts. There are also risks of human rights violations when the terms "extremism" or "radicalization" are used to cover non-violent activity. States should ensure that the focus of their measures is on actual conduct, rather than mere opinions or beliefs. International human rights law provides a clear framework for the promotion and protection of human rights. In particular, the right to hold an opinion and the freedom to have or adopt a religion or belief of one's choice cannot be subject to any restrictions.

62. In cases in which international human rights law permits restrictions, the State must demonstrate their necessity and only take such measures as are proportionate to the pursuance of legitimate aims in order to ensure continuous and effective protection of the concerned rights. Therefore, when adopting measures to prevent or counter violent extremism that entail restrictions on rights, in particular freedom of expression and the right to privacy, States must provide clear and evidence-based justifications for these measures and demonstrate how their perceived benefits outweigh the harm caused.

63. Adequately conceptualized and transparent programmes aimed at preventing and countering violent extremism have the potential to contribute both to enhanced security and to better protection of human rights. However, there is a clear need for vigilance in ensuring that measures to prevent and counter violent extremism fully comply with international human rights law.

64. Recurring components of programming to prevent and counter violent extremism include community engagement and empowerment, as well as youth engagement. Activities undertaken or supported by States to prevent or counter violent extremism should be gender sensitive, inclusive, tailored to the specific local context and based on a climate of trust between the State and those under its jurisdiction. Supporting the resilience of communities to threats of violent extremism is vital. Any programmes and measures must neither discriminate nor stigmatize particular groups or communities. Efforts to prevent and counter violent extremism should neither directly nor indirectly result in racial, religious or other profiling.

65. Measures to prevent and counter violent extremism online should clearly set out the legal basis, criteria and guidance on when, how and to what extent online content is blocked, filtered or removed. States should also review their laws, policies and practices with regard to surveillance, interception, collection and retention of personal data in order to ensure full conformity with international human rights law. If there are any shortcomings, States should repeal, amend or promulgate such laws

to ensure that there is a clear, precise, accessible, comprehensive and non-discriminatory legal framework. Information and communications technology companies should allow surveillance of individuals on their platforms only when ordered to do so following judicial intervention.

66. An approach based on strengthening the rule of law, with appropriate checks and balances, is essential for the legality and legitimacy of any measures and programmes to prevent and counter violent extremism. They should be based on human rights impact assessments and subject to meaningful oversight through independent and effective mechanisms set up at the national level. Constant monitoring and regular review will help to ensure that these measures and programmes achieve their goals and that any negative impact on human rights is promptly addressed. Such monitoring and review should be conducted in an inclusive manner and with meaningful and free civil society involvement. There is also a need for accessible accountability processes that enable resorting to justice and accessing remedies.